IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1621 of 2007

Date of decision : February 01, 2007.

Haryana Forest Development Corporation,
Hisar and another.

... Petitioner

versus

Rajbir Singh and another

... Respondents

Coram: Hon'ble Mr. Justice Uma Nath Singh
Hon'ble Mr. Justice A.N. Jindal.

Present: Mr. Girish Agnihotri, Advocate
for the petitioners.

Uma Nath Singh, J.(Oral)

This writ petition arises out of an award dated 1.9.2006 passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in Reference No.364 of 2000 allowing the reference by directing reinstatement of the Workman with continuity of service and other consequential benefits including 50% back wages from the date of issuance of notice i.e. 14.3.2000 till the date of publication of the award, and full wages thereafter till reinstatement.

It appears that the Workman was employed as a Chowkidar in the Forest Depot at the relevant time. Though he had worked for 240 days but his services were terminated without following the requirement of the provisions of Section 25 (f) of the Industrial Disputes Act (for short 'the Act'). Learned counsel for the petitioner submitted that this is a case of abandonment of service and the respondent being the Chowkidar was the only workman employed in the depot. Learned counsel further submitted that the Labour Court erred in not considering the vouchers placed on the record to show that the Workman had abandoned the service and had not continued for 240 days. Learned counsel further submitted that since the respondent was the only workman at the depot, therefore, the department did not maintain a muster roll. Learned counsel placed reliance on a judgment of Hon'ble the Apex Court in case of ***Himanshu Kumar Vidyarthi and others vs. State of Bihar and others, AIR 1997 S.C. 3657*** to

contend that if the status of the employee is of temporary nature, their disengagement from service cannot be construed to be a case of retrenchment.

We have carefully considered the aforesaid submissions of learned counsel, which took almost over 45 minutes time of the Court and have also perused the award.

We do not find any force therein. It appears that though the petitioner department placed 11 documents (M-1 to M-11) but none of the same having been found to satisfy the judicial conscience of the Presiding Officer, a further opportunity was granted to the department to produce attendance register or muster roll, containing the details of engagement of the workman. But the department could produce none. In the employment of a workman, the management/establishment is supposed to maintain the details of engagement and particularly, when the workman is employed in a Government establishment. Instead of producing any clinching material to build up a case for establishment, learned counsel unduly persisted with one and only submission that except the respondent, there was no other workman engaged in the depot at Hisar, therefore, the department did not maintain any such register, little realising that the workman was being paid from the public exchequer where for the department was under statutory obligation to furnish a detailed accounts of such employment of the workman. Needless to say that in a casual/temporary employment of a workman, the management/ establishment is not only supposed to maintain a muster roll and attendance register duly marking the presence of the workman, but is also expected to produce the same before the Court as and when so required to reach a conclusion as to whether the workman worked for 240 days; and as to whether he abandoned the service himself or as to whether the management/establishment dis-engaged/threw him out of the employment on the strength of money and muscle power. That apart, the establishment is also expected to furnish a copy of the necessary details to the workman in order to help him pursue his case in the Courts of law.

We have granted enough patient hearing but since learned counsel could not make a case on the basis of the materials before us, we are not inclined to grant further indulgence. Hence, the writ petition, being

devoid of any merit, is dismissed as such, without any order as to costs.

(A. N. Jindal)
Judge

(Uma Nath Singh)
Judge

February 01, 2007.
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